IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1307

EDWARD SAMUELS,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

FREDERIC BLOCK
Counsel for Petitioner,
Edward Samuels
1919 Middle Country Road
Centereach, New York 11720
(516) 588-8100

TABLE OF CONTENTS

	PAGE
Reasons for Granting Rehearing and Issuing the Writ	1
Conclusion	5
Certificate of Counsel	5
Order Extending Time to File Petition for Rehearing	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1307

EDWARD SAMUELS,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner prays that this Court grant rehearing of its order of June 19, 1972, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit as prayed for in the petition filed herein on April 10, 1972.*

Reasons for Granting Rehearing and Issuing the Writ

On June 22, 1972, after the Court denied certiorari, the Court rendered its decision in *Barker* v. *Wingo,* No. 71-5255, wherein it established the criteria by which a claimed deprivation of the Sixth Amendment right to

* Pursuant to order of Mr. Justice Blackmun dated July 19, 1972, the time for filing this petition for rehearing was extended to August 14, 1972. This order is appended hereto.

a speedy trial must henceforth be measured. The petitioner's certiorari petition had set forth the denial of his right to a speedy trial as one of the principal reasons for the granting of certiorari. While the petition makes reference to the pendency of *Barker* (Petition for Certiorari, pp. 10-11), certiorari was denied prior to the Court's decision in *Barker*, and hence neither the petitioner nor the Court had the opportunity to address themselves to the newly declared standards subsequently established by *Barker*.

The Second Circuit, in the present case, denied petitioner's Sixth Amendment claim because of its strict application of the demand-waiver rule, in accordance with that line of Second Circuit cases which is referred to in *Barker* at footnote 23, stating that the requirement of a demand was "a prerequisite to any speedy trial claim in this circuit" (Opinion of Court below, Appendix to Petition for Certiorari, p. 37). Since the Court in *Barker* rejects the demand-waiver rule, it is obvious that the court below did not essay the defendant's speedy-trial claim in accordance with proper constitutional principles.

Since the balancing test established by *Barker* "necessarily compels courts to approach speedy-trial cases on an *ad hoc* basis" (*Barker* v. *Wingo*, Point IV, p. 16), the petitioner sets forth herein some of the circumstances which make his case much stronger than *Barker*, which the Court considered "to be close" (*Barker*, *supra*, Point V, p. 19).

1. Unlike Barker, the nature of the charges against the petitioner were not acts of violence but rather constituted white collar crimes for which the petitioner was sentenced to a jail term of but 18 months. Consequently, the delay of more than 4 years in the present case is perhaps even more extraordinary than the comparable delay in *Barker*.

2. Unlike Barker, the petitioner took overt action immediately after being indicted to have his case resolved. Thus, on January 20, 1967, less than two months after indictment, he moved for dismissal and, in the alternative, for a bill of particulars. The petitioner therefore manifested an immediate desire for the early resolution of his case, either by dismissal of his indictment, or by the obtainment of all particulars in order to permit his preparation for an immediate trial.

3. For some unexplained reason, the District Court did not render its decision denying the motion to dismiss until December 29, 1967, almost one year later, at which time it also ordered the government to furnish the requested bill of particulars.

4. Three months later, on March 27, 1968, the case was marked off the Court's calendar, apparently at the government's request.* Nothing was done thereafter until November 30, 1970, *when the case was first set for trial.* Only then did the government serve its bill of particulars, one week later and virtually three years after being ordered to do so. Thus, unlike Barker, where the Commonwealth successfully maintained the case on the trial calendar during the entire period of delay by frequently obtaining continuances on notice to the defendant, the petitioner was very likely lulled into a false belief that the government had abandoned, or was in the process of abandoning, its desire to try him since the case was marked off the calendar, was not set for trial until four years after the indictment, and since the government did not

---

* The Docket Sheet entry (3A) only indicates that the case was marked off by the Court. The record is barren of who made the request, or whether the defendant was given an opportunity to object. Since the government claims that the reason for the delay was the alleged fugitive status of Scharf, it is assumed that the case was marked off at the government's request.

comply with the District Court's order to furnish the defendant with a bill of particulars until just only a few weeks before trial.

5. Only on the eve of trial did the government proffer a reason for the extraordinary delay, claiming that it had spent the prior four years searching in vain for the principal defendant, Scharf. Since Scharf was obviously the main target of the prosecution, it is apparent that Scharf was not, and could not be, realistically considered as a government witness to be used against Samuels. The government's only realistic justification in delaying the trial in Scharf's absence was undoubtedly to avoid having two separate trials in the event Scharf was ultimately found. Whether this justifies the extraordinary delay must be considered highly problematical.

Since *Barker* is acknowledged by the Court to be a close case, the circumstances of the petitioner's case point toward reversal. Unlike *Barker*, the petitioner did not clearly acquiesce in the delays, if in fact he acquiesced at all; his case was not set for trial until four years after indictment, and in all probability he was lulled into a false belief that the government had abandoned, or would abandon, the prosecution since the case was marked off the calendar, and no bill of particulars was furnished, until the eve of trial, to enable Samuels to prepare for trial, in contravention of a specific court order.

As Justice White acknowledged in his concurring opinion in *Barker:*

> "Although the Court rejects petitioner's speedy trial claim and affirms denial of his petition for habeas corpus, it is apparent that had Barker not so clearly acquiesced in the major delays involved in this case, the result would have been otherwise. From the State's point of view, it is fortunate that the case was set for early trial and that postponement took place only upon formal requests to which Barker had opportunity to object."

Conclusion

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Second Circuit. The petitioner specifically further requests the Court to exercise its discretion, upon the granting of the writ, should it prefer not to hold a full hearing before the Court, to either summarily reverse on the authority of *Barker* v. *Wingo,* or to remand the case to the Circuit Court for reconsideration in light of *Barker.* Stern & Gressman, *Supreme Court Practice,* Third Edition, § 5-12, pp. 185-189; *DeVries* v. *Baumgartner's Electric Construction Co.,* 359 U.S. 498 (1959); *W.M.C.A.* v. *Simon,* 370 U.S. 190 (1962); *Bradley Mining Company* v. *Boice,* 345 U.S. 932 (1953); *Public Service Commission* v. *Federal Power Commission,* 361 U.S. 195 (1959).

Respectfully submitted,

FREDERIC BLOCK
Counsel for Petitioner

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

FREDERIC BLOCK
Counsel for Petitioner

Order Extending Time to File Petition for Rehearing.

SUPREME COURT OF THE UNITED STATES

No. A-89 (Case No. 71-1307)

EDWARD SAMUELS,

Petitioner,

v.

UNITED STATES

ORDER

UPON CONSIDERATION of the application of counsel for petitioner.

IT IS ORDERED that the time for filing a petition for rehearing in the above-entitled cause be, and the same is hereby, extended to and including August 14, 1972.

/s/ HARRY A. BLACKMUN
Associate Justice of the Supreme
Court of the United States

Dated this 19th, day of July, 1972.